

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6651**

**BILL NUMBER:** HB 1291

**NOTE PREPARED:** Feb 2, 2007

**BILL AMENDED:** Feb 1, 2007

**SUBJECT:** Appointment of Special Prosecutors.

**FIRST AUTHOR:** Rep. Van Haaften

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:**     **GENERAL**  
                              **DEDICATED**  
                              **FEDERAL**

**IMPACT:** Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

- A. It requires a court to appoint a special prosecutor if: (1) a previously appointed special prosecutor files a motion to withdraw as special prosecutor or has become incapable of continuing to represent the interests of the state; and (2) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.
- B. It changes the compensation and reimbursement of expenses incurred by special prosecutors so that special prosecutors and senior prosecuting attorneys can be paid by the hour and so that special prosecutors can be reimbursed for any secretarial, investigatory, or discovery expenses that they may have incurred in the course of the criminal prosecution.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** (Revised) *Appointments of Special Prosecutors* – Under current law, a circuit or superior court is required to appoint a special prosecutor when any person other than the prosecuting attorney or the prosecuting attorney's chief deputy files a verified petition requesting appointment of a special prosecutor and the prosecuting attorney agrees. The court may also appoint a special prosecutor if one of three circumstances occur:

1. The person files a verified petition requesting the appointment of a special prosecutor and the court finds clear and convincing evidence that the appointment is necessary;
2. If the prosecuting attorney files a petition to request a special prosecutor;
3. An elected public official is a defendant in a criminal proceeding.

There are two types of special prosecutors: (1) those who are currently employed as a prosecuting attorney in another county and (2) those who have been employed for at least 8 years as a prosecuting attorney or chief deputy and have filed an affidavit requesting designation as a senior prosecuting attorney.

The following table compares and contrasts some of the differences between these two.

<u>Type of Officer</u>	<u>Special Prosecutor</u>	<u>Senior Prosecuting Attorney</u>
Qualifications	<u>Currently</u> employed as prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor	<u>Was</u> employed for at least 8 years as prosecuting attorney or chief deputy prosecuting attorney; must file affidavit requesting designation as a senior prosecuting attorney in circuit court of county in which the person is willing to serve
Compensation	\$433 per day	Combination of payments and retirement benefits may not exceed the minimum compensation to which a full-time prosecuting attorney is entitled

This bill addresses the problem of when a special prosecutor is unable to continue representing the state in a criminal case. Reasons that special prosecutors may not be able to continue in a case include creation or discovery of their own conflict in a case, death, retirement, or because the prosecutor has been elected to a judgeship. Under current law, if the special prosecutor voluntarily withdraws from the case and a new special prosecutor is not appointed, the statute of limitations on the case may expire and the case in question would be dismissed by the court. If a court is required to appoint a new special prosecutor, then the county would be required to pay \$433 per day if a prosecuting attorney from another county serves as a special prosecutor or \$335 a day if a chief deputy is appointed.

*Compensation of Special Prosecutors* -- Special prosecutors are paid on a daily rate, currently \$415.65, based on an annual salary of \$115,282 and a 277-day year. This bill would allow these special prosecutors to be paid at an hourly rate and would specifically permit the court to pay for reasonable costs of investigation, discovery, and secretarial work. There are reportedly some instances when both senior and special prosecutors have had to pay in advance for coroner reports and depositions and were uncertain whether they were reimbursed by the court for these expenses. Counties could save money if a special prosecutor spends less than a full day on a criminal case but receives the full per diem. The hourly rate would be \$55.42.

*Appointment of Senior Prosecuting Attorneys* -- Under current law, former prosecuting or deputy prosecuting attorneys who wish to work as senior prosecuting attorneys are required to file an affidavit in the circuit court of the county in which they wish to work. This bill would also require these senior prosecuting attorneys to also file in each superior court in a county as well as the circuit court. This should not affect county expenditures but would ensure that superior court judges would know about the availability of a senior

prosecuting attorney in the county.

*Compensation of Senior Prosecuting Attorneys* – Under current law, compensation for senior prosecuting attorneys may not be more than the per diem paid for a full-time prosecuting attorney. This bill would also allow senior prosecuting attorneys to be paid on an hourly rate. Counties would save money if they can pay senior prosecuting attorneys by the hour rather than by the day. Since senior prosecuting attorneys are also considered a form of special prosecutor, they would also be eligible for reimbursement of expenditures made for investigation, discovery, or secretarial work.

This bill also would increase the number of days that senior prosecuting attorneys can work and be paid if they are currently not receiving retirement benefits. There are reportedly some senior prosecuting attorneys who are not drawing retirement who have had more opportunities for appointments than they could accept because of the 100-day limit.

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts with criminal jurisdiction.

**Information Sources:** Michael Dvorak, St. Joseph County Prosecuting Attorney; Steve Johnson, Prosecuting Attorneys Council.

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